

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

OPENAI, INC.

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LITIGATION

This Document Relates To:

Case No. 1:23-cv-08292-SHS-OTW
Case No. 1:23-cv-11195-SHS-OTW

Case No. 1:25-md-3143-SHS-OTW

**DEFENDANT MICROSOFT CORPORATION'S
RESPONSE TO PLAINTIFFS' MOTION TO SEAL**

Pursuant to Paragraph 34 of the Stipulated Protective Order (ECF 367), Defendant Microsoft Corporation (“Microsoft”) submits this response in support of Plaintiffs The New York Times Company and Authors Guild Inc., *et al.*’s (“Plaintiffs”) Motion to Seal portions of their letter motion to compel the OpenAI Defendants related to their text and social media productions (ECF 385) (“Motion”) requesting that Exhibits 6 (ECF 390-5) and 7 (ECF 390-6) be sealed in their entirety.

Although “[t]he common law right of public access to judicial documents is firmly rooted in our nation’s history,” this right is not absolute and courts “must balance competing considerations against” the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). “The proponent of sealing ‘must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’” *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). “[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied

to material introduced at trial, or in connection with dispositive motions” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

Exhibits 6 and 7 to the Plaintiffs’ letter motion are highly confidential documents, the disclosure of which would unfairly prejudice Microsoft. Exhibits 6 and 7, which have been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order, contain highly confidential information about Microsoft’s work with OpenAI and other third parties to the litigation. *See Ex. A* (Declaration of Lucky Vidmar). They are also documents that have been exchanged during the course of discovery and are designated under the Protective Order. *New York Times*, ECF 378. Microsoft requests that Exhibits 6 and 7 be sealed in their entirety.

The information Microsoft seeks to seal and redact is the type of information commonly found to warrant sealing. *See id.* (granting motion to seal similar information and documents in this case); *see also Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft supports Plaintiffs' Motion to Seal portions of their letter motion to compel the OpenAI Defendants related to their text and social media productions (ECF 385). Specifically, Microsoft requests that Exhibits 6 (ECF 390-5) and 7 (ECF 390-6) be sealed in their entirety.

Dated: August 5, 2025

Respectfully submitted,

/s/ Jared B. Briant

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